1944 K Legal DEPARTMENT

Examined NCB 10/4

A BRANCH

File No. S. Kan. 1/44

Subject:—

C. S. No. 125 of 1943

Keshav Timmappa Hegde -- Plff

V/s.

1) The Province of Bombay.
2) Sannappa Venkappa Hegde. } -- Deft.
3) Manjappa Venkappa Hegde

Claim Rs 40-12-0 for Court fees and Rs. 300 for other purposes.

P 33/E

File No. S. Kan. 1/44.

Std. Scott. Slip 24-B

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Legal Department File No1

Sr No.	Compilation No.	Subject	Pages

Rule 118 (3)(b) Copy of the plaint. Civil suit No. 125/1943.

In the Court of the First Class Sub Judge of Karwar.

Keshav Timmappa Hegde Shigehalli,
Havik Brahmin, aged about 40 years
land-holder of Sirsi. -- Plaintiff.

Vs.

1. The Province of Bombay.

2. Sannappa Venkappa Hegde, Havik Brahmin, aged about 43 years Land-holder of Sarkuli in Siddapur taluk.

3. Manjappa Venkappa Hegde, Havik Brahmin, aged about 38 years, Patil of Sarkuli in Siddapur taluka. ---------- Defendents

Claim Rs.40-12-0 for Court fees and Rs.300/- for other purposes.

The plaintiff begs to state as follows:-

1. The plaintiff was the owner and registered occupant of survey No.19 pot hissa 4 measuring 0-6-8 and assessed at Rs.2-8-0 and other lands in Sarkuli village in Siddapur Taluka in the North Kanara District. These lands were held on mulgeni by Deft. 3 on condition that he should pay assessment and local cess directly to Government and a net monafa of Rs.43-2-9 to the Plff. as landlord. Accordingly, Deft. 3 had been paying every year assessment and local cess. But, it seems he committed default in payment thereof during the year 1940-41. Thereupon the amount of assessment and cess of Rs.17-11-0 and one-forth fine of Rs.4-4-1 - total Rs.21-15-1 were directed to be recovered from the Plff. as the registered occupant. When the village officer of Sirsi, to whom the recovery papers were sent, demanded payment, the Plff. fully paid up the said amount of Rs.17-11-0 but, as regards the amount of fine, he made an

(a) Whatever the conditions of the mulgeni agreement between the plaintiff and his mulgeni tenant, the occupant is primarily liable for payment of the land revenue under section 136 L.R.C. Government is not concerned the terms of such agreement. is statement that default of payment was made in respect of an amount of Rs.17-11-0 is not correct. The exact amount in arrears was Rs.17-11-1 and ¼th fine of Rs.4-4-0. The figure of 0-0-1 in the asst. is due to the proportionate apportionment of the land revenue on joint ... The Plaintiff, defaulter paid on 26-5-... the Land revenue of Rs.17-11-0 leaving in arrears R. of 0-0-1 + 1/4th fine of

endorsement below the prakaran praying for its remission, under the peculiar circumstances of the case, but he received no reply. Thereafter, the Plff. received a notice of forfeiture under Sec.153 L.R. Code dated 30-5-1941, with regard to all the lands comprised in the lease hold, on the ground that the amount of fine of Rs.4-4-1 had not been paid. Accordingly, these lands were forfeited under that section and later, the Mamlatdar of Siddapur issued a sale proclamation fixing the sale of the forfeited lands on 30-7-1941.

2. When the Plff. inquired with the village officer of Sarkuli on 15-6-1941 about the matter of fine, the latter assured him that he would try to recover the amount from Deft. 3. A further inquiry made with him on 23-7-1941 elicited the reply that the amount could be paid the next day at Kansur where the sale was advertised to take place. Accordingly, the Plff. sent his representative there on the next day. But the officer who was to conduct the sale told him that no sale would take place, as the amount might have been made good. Meantime, the village officer arrived there and it was from him that the Plff's representative first came to know that one of the forfeited lands had been disposed of in favour of an adjacent owner. On further inquiry, the Plff. came to know that, out of the forfeited lands the suit land, described in para 1 above, had been disposed of in favour of Deft. 2, the owner of pot hissa No.3 of the same survey number, who is no other than a brother of the mulgeni tenant Deft. 3. This disposal purports to have been made under section 117 B of the Land Revenue Code.

xx. Rs.4-4-0. The lands had to be therefore forfeited under section 153 L.R.C. for the realisation of L.R. of 0-0-1 together with the other incidental charges.

(b) The plaint land was a division No.4 of S.No.15, Sarkuli village in Siddapur taluka. The Collector is by law bound to offer such sub-division if forfeited to the occupant of the adjacent sub-division at a reasonable price(section 117 L.R.C.). It is only when these adjacent holders refuse to buy such a sub-division, it is disposed of generally by auction. The procedure followed in such cases usually is that action is taken simultaneously under the provisions of Chapter XI of L.R.C. to dispose of the lands by auction sale since it is in the best interests of the Govt. as well as not prejudicial in any way to the interests of the holders of the adjoining sub-divisions of the same S.No. In this particular case an occupant of another sub-division of the

3 # 7

- same S.No. accepted the offer of the plaint land that is S.No.19/1 of Sarkuli at the price of ~~Xxx~~ Rs.6/- which is the price fixed by the panchas. The other forfeited sub-division was therefore released. The Revenue authorities were therefore right in not - holding the sale. If the Plff. faulter was really earnest yin the arrears he would ve waited till the last of the sale.

(c) It is not a fact that the plaintiff preferred an appeal to the Prant Officer in this respect. He had submitted an application and he was - lvised under Prant's No. 9395 of 10-8-41(page 63) to an appeal according law if he was aggrieved.

d) There is nothing on record o show that the plaintiff has referred an appeal to the enue Tribunal as stated in plaint.

The plaintiff's contention the order of forfeiture d disposal of the plaint land der section 117-B L.R.C. is ndless. Because, the amount rears does cover an amount of land ve as in

3. The Plff. thereupon, presented an appeal on 31-7-1941 to the Prant Officer, Sirsi - Division, stating all the facts relating to the matter. He received a reply dated 10-8-41 to the effect that an inquiry was being made into the allegations about the village officer of Kansur and advising an appeal in case the Plff. felt aggrieved. Subsequently, he received a communication of 13-10-1941 from the - Mamlatdar of Siddapur which reproduced the - final order of 7-10-1941 passed by the Prant Officer to the effect that the disposal of the suit land under sec. 117 B was quite justified, that the village officer of Kansur was in no way responsible in the matter and that the other lands was released from forfeiture. The Plff. thereafter addressed an appeal to the Collector of Kanara on 3-12-1941 which, however, came to be dismissed on 29-1-1942. His appeal to the Commissioner met with the same fate. His final appeal to the Revenue Tribunal is still pending before that body. It is thus - clear that the Plff. has presented all such appeals allowed by law as it was possible for him to do.

4. The Plff. contends that neither the - order of forfeiture under Sec.150 nor the order of disposal of the suit property under sec. - 117-B Land Revenue Code is legal and valid. For, to attract their applicability, default must have been made in payment of land revenue as such. In this case, however, the amount of land revenue had been fully paid, as will - appear from the Plff's endorsement below the recovery prakaran. What had remained to be - paid was only the amount of fine, which indeed, is no part of land revenue. The aforesaid

orders, therefore, are illegal and ultra vires. Besides, the suit land is a very valuable - holding and the amount for which it was disposed of to Deft. 2 forms a ridiculously small fraction of its real value. No proper panchanama was made about the real value of the land nor was the Plff. apprised of these proceedings before orders were actually passed. He has reason to suspect that Deft. 3 has manoeuvred these things for his own benefit. It is learnt that the - kabulayat regarding the grant of suit land to Deft. 2 has been sanctioned on 18-12-1941 and that he is shown as the registered occupant in the record of rights in place of the Plff.

5. The Plff. therefore, gave through his pleader, a notice to the Collector of - Kanara on 11-7-1942 under sec. 80 of the Civil Procedure Code that he would sue the the - Provincial Government along with Defts. 2 and 3 for the reliefs mentioned herein below and the Collector acknowledged receipt thereof in his letter No.7211 dated 15/20th July 1942. Though more than two months have since elapsed no reply has been received from the Collector nor anything done in the matter. Hence this suit is instituted for declaration, injunction, constructive possession, mesne profits and costs. The cause of action for all these reliefs arose at Sarkuli on 18-12-1941, the date of the sanction of the kabulayat in favour of Deft. 2 when - wrongful dispossession of the Plff. must be deemed to have been taken place.

6. This court has jurisdiction to try this suit as not only the cause of action - arose within the limits of the special jurisdiction of this Court but also Defts. 2 & 3 reside within these limits.

7. The valuation of this suit for purpose of Court is Rs.40-12-0 and for other purposes Rs.300-0-0.

8. The Plff. therefore, prays for the following reliefs :-

1. A declaration that the order of forfeiture under sec. 153 and the order of disposal under sec. 117 B of the Land Revenue

respect of the land forfeited the applicability of section 153 I.P.C. to the suit case is perfectly justifiable. The plaintiff cannot question the price paid by the adjacent holder as his land has been fixed by the Panchas and apprehended by the Prant Officer is - reasonable.

In the Court of the First Class Sub-Judge of Karwar.

Civil Suit No.125 of 1943.

Keshav Timmappa Hegde.....Plaintiff

versus

(1) The Province of Bombay,
(2) Shnappa Venkappa Hegde,
(3) Manjappa Venkappa Hegde)..Defendants.

Written statement of defendant No.1 herein is as follows:

1. It is denied that plaintiff had paid the full amount of land revenue arrears. The amount due from plaintiff was really Rs.17-11-1 for arrears of land revenue and Rs.4-4-0 for fine. On 26th May 1941 plaintiff paid up Rs.17-11-0 only, thus leaving unpaid Rs.0-0-1 as arrear of land revenue and Rs.4-4-0 as fine. The suit land was thus liable to be forfeited in respect of the said arrear of land revenue.

2. This defendant is not concerned with the agreement between plaintiff and defendant 3. Plaintiff as being the occupant was primarily liable for the payment of land revenue. The default was the plaintiff's default.

3. It is denied that the forfeiture took place for the amount of the fine only as contended by plaintiff. This defendant affirms that the order of forfeiture was intra vires and was perfectly according to section 153 of the Land Revenue Code.

4. This defendant also affirms that the order of disposal under section 1173 was perfectly intra vires. Government were not bound to dispose of the land by public sale on 30th July 1941 or even to wait till that date. Plaintiff's allegations against the ~~xxxxxx~~ propriety of the disposal are all denied.

5. Plaintiff's allegations against the village officer are not relevant to this suit and they are also denied.

6. The suit is barred under sections 4 and 11 of the Revenue Jurisdiction Act and art.14 Schedule I of the

Limitation Act.

7. Plaintiff is not entitled to any relief and his suit should be dismissed with costs.

District Government Pleader,
Kanara.

I, ,District Government Pleader, Kanara, do hereby declare that what is stated in paragraphs 1 to 7 above is true according to the information received and believed to be true. This verification is made at this day of 194

District Government Pleader,
Kanara.

The plff herein seeks relief against the forfeiture and dismissal of his land I have revised the draft brief in the light of the discussion with the RLA (Please see at slip 'φ') The forfeiture took place for a total amount of Rs 4-4-1 out of which Rs 0-0-1 was due for land revenue and Rs 4-4-0 due for penalty. The penalty has been levied under S. 148 of the Land Revenue Code. The plff's contention that there can be no forfeiture in respect of penalty has been met by reference to S. 187 of the Land Revenue Code. Plff was a persistent defaulter who took no steps not only after the notice threatening forfeiture, which he admits, was served upon him, but even after the notice of sale after forfeiture was served

After the forfeiture, the dismissal under S. 117 B of the LRC was within the powers of the Deputy Collector.

Sanction may be accorded to defend the suit on the lines of the revised draft brief. A draft vakalat is also put up.

18/1

568 ✓ RLA Rec'd 18/1/44

A/19-1-44.

No. 429 B/18/44. Sec/RD 18.1.44.

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Received on- 13-7-1943
Registered on- 26-7-1943.
Decided on- 31-8-1944.
Duration- 12,D-1,M-1, Year.

IN THE COURT OF the F.C.Subordinate Judge, Karwar.
AT Karwar.
Civil Suit No.125 of 1943.

Exh.39

Pleaders
Mr. V.S.Gokarn.

Keshav Timmappa Hegde Shigehalli, Havik Brahmin, age about 40 years, landholder of Sirsi. Plaintiff

against

M.B.Chandawarkar Govt. Pleader.
Mr. K.A.Haldipurkar

1. The province of Bombay.
2. Sannappa Venkappa Hegde, Havik Brahmin, age about 43 years landholder of Sarkulli in Siddapur Taluka.
3. Manjappa Venkappa Hegde, Havik Brahmin, age about 38 years, Patil of Sarkuli in Siddapur Taluka. Defendants

Defendant No. 3's name is deleted as per ord a below Ex. 15 on 4-11-1943.

Claim- Rs. 40-12-0 for Court fees.
Rs. 500/- for other Purposes.

The Plaintiff sues for a declaration that the order of forfeiture under section 153 and the order of disposal under section 117B of the Land Revenue Code regarding the suit land are illegal and ultra vires, that the plaintiff is still owner of the suit land and not defendant No. 2 -the new registered occupant- that defendant No. 3 is still the plaintiff's Mulgeni tenant regarding the suit land and that the plaintiff alone and not defendant No.2 is entitled to recover Mulgeni rent of the suit land from defendant No.3 and for a permanent injuncton restraining difendant No. 1 from recognising defendant No.2 as owner and registered occupant of the suit land and for constructive possession of the suit land from defendants No. 1 and 2 and for mesne profits and costs of suit from defendants No.1 and 2.

O.P.2

The Plaintiff alleges that he was the owner and registered occupant of survey No. 19 Pot hissa 4 measuring 0-6-8 and assessed at Rs.2-8-0 and other lands in Sarkuli village in Siddapur Taluka in the North Kanara District. These lands were held on Mulgeni by defendant No. 3 on condition that he should pay assessment and local cess directly to Government and a net Kumafa of Rs. 43-2-9 to the plaintiff as landlord. Accordingly defendant No. 3 had been paying every year -- assessment and local cess. But, it seems he committed default in payment thereof during the year 1940-41. Thereupon the amount of assessment and cess of Rs.17-11-0 and one-forth fine of Rs.4-4-1- total Rs. 21-15-1-were directed to be recovered from the plaintiff as the re-

stored occupant. When the village officer of Sirsi, to whom the recovery papers wer sent, demanded payment, the plaintiff fully paid up the said amount of Rs.17-11-0 but, as regards the amount of fine, he m made an endorsement below the prakaran praying for its remission, under the peculiar circumstances of the case, but he received no reply. Thereafter the plaintiff received a notice of forfeiture under Section 153 - Land Revenue Code dated 30-5-1941 with regard to all the lands comprised in the lease hold, on the ground that the amount of fine of Rs. 4-4-1 had not been paid. Accordingly, these lands were forfeited under that section and later, the Mamlatdar of Siddapur issued a sale proclamation fixing the sale of the forfeited lands on 30-7-1941.

When the plaintiff inquired with the village officer of Sarkuli on 15-6-1941 about the matter of fine, the latter assured him that he would try to recover the amount from defendant No.3 A further inquiry made with him on 29-7-1941 elicited the reply that the amount could be paid the next day at Kansur where the sale was advertised to take place. Accordingly, the plaintiff sent his representative there on the next day. But the officer who was to conduct the sale told him that no sale would take place, as the amount might have been made good. Meantime, the village officer arrived there and it was from him that the plaintiff's representative first came to know that one of the aforesaid lands had been disposed of in favour of an adjacent owner. On further inquiry , the plaplaintiff came to know that, out of the forfeited lands the suit land, described above had been disposed of in favour of defendant No.2, the owner of Pot hissa No.3 of the same survey number, who is no other than a brother of the Kulgeni tenant defendant No. 3. This disposal purports to have been made under section 117B of the Land Revenue Code.

The plaintiff thereupon, presented an appeal on 31-7-1941 to the Prant Officer, Sirsi division, stating all the facts relating to the matter. He received a reply dated 10-8-1941 to the effect that an inquiry was being made into the allegations about the village officer of Kansur and advising an appeal in case the Plaintiff felt aggrieved. Subsequently he received a communication of 13-10-1941 from the Mamlatdar of Siddapur which reproduced the final order of 7-10-1941 passed by the Prant Officer to the effect that the disposal of the suit land under Section 117B was quite justified, that the village officer of Kansur was in no way responsible in the matter and that the other lands were released from forfeiture. The plaintiff thereafter addressed an appeal to the Collector of Kanara on 3-12-1941 which, however, came to be dismissed on 29-1-1942. His sec-

25 4

appeal to the Commissioner met with the same fate. His final appeal to the Revenue Tribunal is pending before that body. It is thus clear that the plaintiff has presented all such appeals by law as it was possible for him to do.

The plaintiff contends that neither the order of forfeiture under section 153 nor the order of disposal of the suit property under section 117B Land Revenue Code is legal and valid. For, to attract their applicability, default must have been made in payment of land revenue as such. In this case, however, the amount of land revenue had been fully paid, as will appear from the plaintiff's endorsement below the recovery prakaran. What had remained to be paid was only the amount of fine, which, indeed, is no part of land revenue. The aforesaid -- orders, therefore, are illegal and ultra vires. Besides, the suit land is a very valuable holding and the amount for which it was disposed of to defendant No. 2 forms a ridiculously small fraction of its real -- value. No proper panchanama was made about the real value of the land, nor was the plaintiff apprised of the proceedings before orders were actually passed. He has reason to suspect that defendant No. 3 has manoeuvred these things for his own benefits. It is learnt that the Mahalayat regarding the grant of suit land to defendant No.2 has been sanctioned on 13-12-1941 and that he is shown as the registered occupant in the record of right in place of the plaintiff.

The plaintiff therefore, gave through his pleader, a notice to the Collector of Kanara on 11-7-1942 under section 80 of the Civil Procedure Code that he would sue the Provincial Government along with -- defendants No. 2 and 3 for the reliefs mentioned herein this plaint and the Collector acknowledged receipt thereof in his letter No.7211 dated 15/20th July 1942. Though more than two months have since elapsed, no reply has been received from the Collector nor anything done in the matter. Hence this suit for declaration, injunction, constructive possession, mesne profits and costs

Defendant No.1 files written statement at Ex. 20 and denies the plaintiff had paid the full amount of land revenue arrears. The amount due from the plaintiff was really Rs.17-11-1 for arrears of land revenue and Rs.4-4-0 for penalty. On 26th May 1941 plaintiff paid up Rs. 17-11-0 only, thus leaving unpaid Re. 0-0-1 of land revenue and Rs.4-4-0 of penalty. The suit land was liable to be forfeited in respect of both the said amount of Re.0-0-1 and Rs.4-4-0 and it was so forfeited. This

defendant is not concerned with the agreement between plaintiff and defendant No.3. The plaintiff as being the occupant was primarily liable for the payment of land revenue and it was the default of the plaintiff. It is denied that the forfeiture took place for the amount of the fine only as contended by the plaintiff. It took place for the amount of Rs. 4-4-1 which was made up as stated above; This defendant affirms that the order of forfeiture was intra vires and perfectly according to section 153 of the Land Revenue Code. This defendant also affirms that the order of disposal under section 173 was perfectly intra vires and the Government were not bound to dispose of the land by public sale on 30th July 1941 or even to wait till that date. It is further contended that plaintiff's allegations against the propriety of the disposal are all denied; that the allegations against the village officer are not relevant to this suit; that this suit is barred under sections 4 and 11 of the Revenue Jurisdiction Act and article 14 Schedule I of the Limitation Act; that plaintiff's suit should be dismissed with costs.

Defendant No.2 by his written statement Ex. 16 contends that he is neither aware nor bound by the alleged Kulgeni agreement between Plaintiff and Defendant No.3; that the suit land was validly forfeited and disposed of in his favour and the plaintiff cannot challenge this disposal; that he is not aware of any of the appeals preferred by the plaintiff; that those appeals have been correctly decided; that the suit is barred under the Revenue Jurisdiction Act and Limitation Act; that the notice of suit is not in accordance with law; that the cause of action has not been correctly shown; that there is no cause of action against Defendant No.2; that the plaintiff is not entitled to the declaration, possession, and mesne profits sought; that in the event of the plaintiff's prayer being granted Defendant No. 2 should be reimbursed of his large amount spent on the improvements of the suit land and the suit be dismissed and his costs awarded.

Issues.

The issues framed by Mr. S.S.Alur are:-

1) Is it proved that the order of forfeiture and the order of the disposal of the suit property by Defendant No.1 are illegal and ultra vires as alleged in the plaint ?

Does plaintiff prove his title to the suit property?

3) Is it proved that Defendant No.2 has made improvements to the suit property?

4) If so , is he entitled to any and what amount on that account ?

5) Is the suit barred under sections 4 and 11 of the Revenue Jurisdiction Act ?

6) Is the suit in time ?

7) Is Plaintiff entitled to the declaration, injunction, possession and mesne profits sought ?

8) What order ?

F i n d i n g s .

My findings are:- 1) No. 2) No. 3) and 4) Do not arise. 5) The suit is barred under section 4 as well as section 11 of the Revenue Jurisdiction Act. 6) No. 7) No. 8) As ordered.

R e a s o n s .

Issues 1 and 2: These issues may be taken together.

Plaintiff held lands assessed at Rs.20-15-1 including Rs. 2-4-0 of bagayat in the village of Sarkuli in Siddapur Taluka. In the year 1940-41 Plaintiff had to pay Rs. 24-11-1 on account of land revenue (vide Ex. 31 Khata extract of the Plaintiff). Out of this Rs. 4-0-0 were paid on 25-2-1941 and Rs.3-0-0- on 17-4-1941. He thus remained in arrears to the extent of Rs.17-11-1 for which a Chouthai penalty of Rs. 4-4-0 was imposed on him under section 148 of the Land Revenue Code. On 26-5-1941 Plaintiff paid Rs.17-11-0 leaving a balance of 0-0-1 on account of land revenue and Rs. 4-4-0 on account of fine. As he did not pay the arrears and the penalty imposed, the revenue authorities issued notices on 30-5-1941 intimating that there would be forfeiture; and they were served on the Plaintiff on 3-6-1941. Even then Plaintiff did not care to pay the amount due.

On 16-4-1941, survey Nos. 19/4 and 23/5 out of the Plaintiff holdings were forfeited to the Govenment for non-payment of the said 0-0-1 on account of Land revenue and Rs.4-4-0 on account of fine.

Plaintiff alleges that the assessment to be paid by him was Rs.17-11-0 and the Chouthai fine imposed on him was Rs.4-4-1. He further states that he paid up the full amount of assessment of Rs. 17-11-0 but as regards fine he made the endorsement on the notice Exhibit No. 30 praying for its remission. It is obvious that the averment of the Plaintiff that nothing was due on account of land revenue is incorrect. In fact the notice threatening forfeiture Ex. 30 clearly showed that 0-0-1 was due on account of land revenue.

As I have stated above, the default of the Plaintiff resulted

Code regarding the suit land are illegal and ultra vires, that the Plff. is still the owner of the suit land and not Deft.2 - the new registered occupant - that Deft. 3 is still the Plff's mulgeni tenant regarding the suit land and that the Plff. alone and not Deft. 2 is entitled to recover mulgeni rent of the suit land from Deft. 3.

Valuation for this purpose is Rs. 5-0-0

2.A permanent injunction restraining Deft. 1 from recognising Deft. 2 as owner and registered occupant of the ~~the~~ suit land.

Valuation for this purpose is Rs. 5-0-0

3. Constructive possession of the suit land from Deft. 1 & 2.

Valuation for this purpose is 7½ times the assessment of Rs.2-8-0 which amounts to Rs. 18-12-0

(valuation for jurisdiction is Rs.278-0-0)

4. Mesne profits from Defts 1 and 2 from 18-12-1941, the date of wrongful dispossession.

Valuation for this purpose is Rs. 12-0-0

and

5. Costs of suit and such other reliefs as the circumstances of the case may require, from the said Defts. or such of them as may be found liable.

Total. Rs. 40-12-0

Sd.

I, Keshav Timmappa Hegde Shigehalli, the - aforesaid Plff. do hereby declare that the - contents of paras 1 to 3 and 5 exeepting portions of para 2 with reference to his representative

are true to his personal knowledge and that the contents of the rest of the plaint are true according to information received and believed to be true.

Signed at Sirsi 16-7-1943.

Sd.

Filed on 19-7-43.

Sd.

accordance with sec. 117-B of the L.R.C. and the order is intra vires.

2. Defence of the suit may be sanctioned in accordance with the accompanying brief.

30/2

RLA I shd like to discuss this case with Addl. P.A

P. Nair 4/

Addl. P.A.

Discussed. The facts of the case have not been properly stated. The pff was in arrears of land revenue to the tune of Rs 26 odd. He paid up part of it & the arrears also amounted to Rs 17-11-1. The Revenue authorities then took action under sec. 148 B.L.R. Code and imposed a penalty of pice 4 Rs 4-4-0. ~~Thereafter~~ This amount of fine became merged in the arrears still due. Thereafter the pff paid up Rs 17-11-0 leaving a balance of 1 pie from the original arrears and the fine amount unpaid. For this amount still remaining as arrears of land revenue, a notice of forfeiture was issued. Since the pff again defaulted, the land was forfeited and sold to the adjoining owner of the subdivision. On these facts the suit can be defended on merits as well as on points of law. Will Addl. P.A. please peruse the draft brief in the light of above discussion & give his opinion.

Plaintiff sues for a declaration that the orders of forfeiture and disposal of his land passed by the Deputy Collr., S.D., Karwar, were illegal and ultra vires. He contends that there was no ~~xrxex~~ arrear of land revenue to justify forfeiture. But this is wrong, because when a demand was made, plaintiff left a balance of Re. 0-0-1 arrear of land revenue unpaid. The procedure laid down under section 153, I.R.C. was duly observed and hence the Deputy Collector had jurisdiction to make the order of forfeiture. It was thus intra vires.

2. The forfeited land was a sub-division of a survey number. The Deputy Collector ordered that it should be offered to occupants of other sub-divisions in the same S.No. for the panch value, and that if they refused the offer, it should be sold by public auction. The auction was notified to take place on 30-7-41, but before that defendant 2, an occupant of another sub-division, accepted the said offer and took up the suit land on 16-7-41. This disposal to defendant 2 is in

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In the Court of the First Class Sub-Judge of Karwar.

Civil Suit No.125 of 1943.

Keshav Timmappa Hegde.... Plaintiff

Versus

1). The Province of Bombay,)
2). Sannappa Venkappa Hegde,)...Defendants.
3). Manjappa Venkappa Hegde,)

Written statement of defendant No.1 herein is as follows:

1. It is denied that plaintiff had paid the full amount of land revenue arrears. The amount due from the plaintiff was really Rs.17-11-1 for arrears of land revenue and Rs.4-4-0 for penalty. On 26th May 1941 plaintiff paid up Rs.17-11-0 only, thus leaving unpaid Re.0-0-1 of land revenue and Rs.4-4-0 of penalty. The suit land was liable to be forfeited in respect of both the said amounts of Re.0-0-1 and Rs; 4-4-0 and it was so forfeited.

2. This defendant is not concerned with the agreement between plaintiff and defendant 3. Plaintiff as being the occupant was primarily liable for the payment of land revenue. The default was the plaintiff's default.

3. It is denied that the forfeiture took place for the amount of the fine only as contended by plaintiff. ~~This~~ It took place for the amount of Rs.4-4-1 ~~wherein~~ which was made up as stated in para 1 above. This def. affirms that the order of forfeiture was intra vires and perfectly according to section 153 of the Land Revenue Code.

4. This defendant also affirms that the order of disposal under section 117B was perfectly intra vires. Government were not bound to dispose of the land by public sale on 30th July 1941 or even to wait till that date. Plaintiff's allegations against the propriety of the disposal are all denied.

5. Plaintiff's allegations against the village Officer are not relevant to this suit and they are also denied.

6. The suit is barred under sections 4 and 41 of the Revenue Jurisdiction Act and art 14 Schedule I of the Limiation Act.

7. Plaintiff is not entitled to any relief and his ~~suit~~ suit should be dismissed with costs.

District Government Pleader,-
Kanara.

I, District Government Pleader, Kanara, do hereby declare that what is stated in paragraphs 1 to 7 above is true according to the information received and believed to be true. This verification is made at this day of 194

District Government Pleader,
Karwar.

Ms.

Suits :

Karwar.

For a declaration that orders of forfeiture and on disposal regarding suit land are illegal and *ultra vires*.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 485.

Bombay Castle, 20th January 1944.

Letter from the Collector of Kanara No. 7211, dated the 5th October 1943—Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

IN THE COURT OF THE FIRST CLASS SUB-JUDGE OF KARWAR.
Civil Suit No. 125 of 1943.

Keshav Timmappa Hegde .. .. Plaintiff;

versus

(1) The Province of Bombay .. ..
(2) Sannappa Venkappa Hegde .. .. } Defendants.
(3) Manjappa Venkappa Hegde .. ..

Claim—Rs. 40-12-0 for Court fees and Rs. 300 for other purposes.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 292, dated the 13th October 1943—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Karwar, No. 484, dated the 20th January 1944—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—The defence of the suit is sanctioned on the lines of the accompanying brief.

By order of the Governor of Bombay,

original. P.N.M.O.S

P. N. MOOS,
Secretary to Government.

G. R., No. 485, L. D., dated the 20th January 1944.

Issued.
C&P
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To

* The Revenue Department,
* The Commissioner, Southern Division,
* The Collector of Kanara,
The District Government Pleader, Karwar (with two copies of the brief).

*With a copy of the brief.

No. — of 1944.

Copy forwarded for information and guidance to

Submitted after issue

This may be filed in a new suit file.

DK
2/3: Add-P.P.

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KARWAR CIVIL SUIT No. 125 OF 1943.

Chronological Statement of Facts.

p. 9 of file.

1. Plaintiff held lands assessed at Rs. 26-15-1 including Rs. 2-4-0 of Bagayat remission in the Sarkuli village. He therefore had to pay Rs. 24-11-1 on account of land revenue for 1940-41. Rs. 4 were paid on 25th February 1941 and Rs. 3 on 17th April 1941. He thus remained in arrears of Rs. 17-11-1 for which a penalty of Rs. 4-4-0 was levied on 2nd May 1941. On 26th May 1941 he paid Rs. 17-11-0 leaving a balance of Re. 0-0-1 on account of land revenue and Rs. 4-4-0 on account of fine. Notices threatening forfeiture were issued on 30th May 1941 and served on plaintiff on 3rd June 1941.

p. 9 of file.
pp. 3 and 20 of file.

pp. 25, 27 of file.

2. On 24th June 1941, Survey Nos. 19/4 and 23/3 out of the plaintiff's holding were forfeited for non-payment of the said Re. 0-0-1 on account of land revenue and Rs. 4-4-0 on account of fine. The lands were ordered to be offered to the occupants of other sub-divisions of the same survey numbers for panch value, and, in case of their refusal, to be sold by public auction.

pp. 39 and 40.

3. Notices fixing sale on 30th July 1941 were issued, a copy of which was served on the plaintiff on 29th June 1941. Simultaneously orders were issued on 27th June 1941 to the village officers to inquire with the occupants of other sub-divisions as to their willingness to take up the forfeited sub-divisions on payment of the panch value.

4. Defendant No. 3 who was the occupant of sub-division 19/3 was willing to take up the forfeited Survey No. 19/4. He paid the panch value of Rs. 6 and the amount was credited into the Sub-Treasury on 16th July 1941.

p. 61.

5. On 31st July 1941, plaintiff applied to the Deputy Collector for remission of fine and also made certain allegations against the village officer. On 10th August 1941 he was advised to prefer any lawful appeal in respect of the order of fine. At the same time the Mamlatdar was directed to make an inquiry into the allegations against the village officer.

p. 63.

p. 67.

6. On 7th October 1941, the Deputy Collector dismissed the plaintiff's allegations against the village officer and also sanctioned the disposal under section 117B of the Land Revenue Code to defendant No. 3. The order was communicated to plaintiff on 13th October 1941.

p. 69.
pp. 73 and 75.

7. Plaintiff's appeal to the Collector was dismissed on 29th January 1942 and a subsequent appeal to the Commissioner was also dismissed on 30th July 1942.

8. On 11th July 1942 plaintiff gave notice of suit under section 80 of the Civil Procedure Code.

9. Plaintiff prays for a declaration that the orders of forfeiture and disposal are illegal and *ultra vires* and for consequential reliefs.

Grounds of Defence.

1. It will be seen from the above Chronological Statement that the plaintiff himself had no irregularity to allege in the procedure before the order of forfeiture. That he was in arrears cannot be doubted. The one-fourth penalty was levied under the provision of section 148 of the Land Revenue Code. The plaintiff's statement that he paid the whole of the land revenue in arrears and only did not pay the penalty is not true. When he paid Rs. 17-11-0, he left unpaid Re. 0-0-1 of land revenue along with Rs. 4-4-0 of penalty. Plaintiff admits that he [redacted] received the notice of the intended forfeiture. Even th[redacted] not pay up t[redacted] said dues of Rs. 4-4-1. He mere[redacted] an endorsem[redacted] on the correspondence that the [redacted] of fine ma[redacted]

remitted. If he had a real grievance he should have preferred a lawful appeal against the order levying the fine. The mere endorsement before the village officer was not enough. The order of forfeiture which followed on 24th June 1941 was the only order which the revenue authorities could have made under the circumstances and was hence a proper and legal order. That the plaintiff was a persistent defaulter may be seen even from his later conduct. After the forfeiture, he had a fresh notice of the sale fixed for 30th July 1941. He had no business to wait till that date. He could have paid up his dues and sought appropriate relief against forfeiture. He never did that. He wasted his time till 31st July 1941 and then made an application complaining against the village officer. Plaintiff has himself to thank for what has happened and there is no irregularity disclosed about the forfeiture.

2. The plaintiff contends, first, that the forfeiture took place for only the amount of fine, and secondly that the amount of fine is no part of land revenue and that a forfeiture could not take place for it. The first part of the contention is not true in fact as shown above. The second is not correct in law. Section 187 of the Land Revenue Code, provides that " all sums due on account of land revenue, all cesses, fees, charges, penalties, fines, and costs payable or leviable under this Act..... shall be levied under the foregoing provisions of this chapter and all the foregoing provisions of this chapter shall, so far as may be, be applicable thereto ". It is therefore clear that the remedy of forfeiture applies as much to penalty as it does to arrears of land revenue strictly so called. In this case it will be found from the Mamlatdar's reference at page 25 of file that the forfeiture took place for the total amount of Rs. 4-4-1 which consisted partly of land revenue and partly of penalty. The Mamlatdar's letter page 25 and the Deputy Collector's order, at page 27 should be produced together.

3. As the Deputy Collector had jurisdiction and the order of forfeiture was *intra vires*, jurisdiction of the Civil Court is barred under section 4 of the Revenue Jurisdiction Act. See Mallappa *vs.* Tukko, I. L. R. 1937 Bom. 464, especially at page 478 of the reports.

4. Under section 153 the Deputy Collector was competent to " sell or otherwise dispose of " the land. There is express authority in " Dharwar Urban Bank Ltd. *vs.* Krishnarao " I. L. R. 1937 Bom. 293 that there is nothing in section 153 or the rules to suggest that a sale following a forfeiture of occupancy must necessarily be a public sale. It is open to the Collector to sell the land privately. Indeed the plaintiff had no interest left in the land after the forfeiture. The Government were not bound to wait till 30th July 1941, the date fixed for the public auction, in order to make the disposal to defendant No. 2. The plaintiff hence cannot complain that the disposal was made either before or after the 30th July 1941. Moreover the disposal was made in accordance with section 117B. It was thus *intra vires*; and the plaintiff cannot attack it. What has been said in paragraph 3 above also applies now.

5. The order of forfeiture was passed on 24th June 1941, after due notice to plaintiff. He did not prefer an appeal therefrom to any revenue authority. The suit is thus barred under section 11 of the Revenue Jurisdiction Act. Plaintiff gave notice of suit as late as 11th July 1942. The suit is thus also barred under Article 14 of the Limitation Act.

6. Government is not concerned with the agreement between plaintiff and defendant No. 3. Plaintiff was primarily liable [redacted]ment of the land revenue.

7. The seve[redacted]tions against the village officer are elevant. [redacted]ould be denied.

New file
S. Kanara/44
3/3/44

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O.S. 125 of 1943.

Keshav Timappa Hegde ..... Plaintiff.

Vs.

1. The Province of Bombay..... Defendants.

I s s u e s.

1. Is it proved that the order of forfeiture and the order of the disposal of the suit property by defendant no. 1 are illegal and ultra vires as alleged in the plaint ?

2. Does plaintiff prove his title to the suit property ?

3. Is it proved that defendant no. 2 had made improvements to the suit property ?

4. If so, is he entitled to any and what amount on that account ?

5. Is the suit barred by Section 4 and 11 of the Revenue Jurisdiction Act ?

6. Is the suit in time ?

7. Is the plaintiff entitled to the declaration, injunction, possession and mesne profits sought ?

8. What order ?

19-4-1944.

Sd. S.S.Alur,
F.C.S.J.

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It is therefore clear that the method of forfeiture applies as much to penalty as it does to arrears of Land revenue, strictly so called. I therefore hold that the plaintiff fails on issue No. 1 and it is -- answered in the negative. Since the title of the plaintiff to the suit land disappeared from the moment of its forfeiture which has been held above as quite legal and valid, issue No. 2 is also answered in the negative.

Issue No.5 It is not disputed that the District Deputy Collector had jurisdiction to declare the rights of the pluintiff's in the suit land as forfeited and in view of my findings on issues Nos. 1 and 2 the order of forfeiture was valid and legal this suit is barred under Section 4 of the Revenue Jurisdiction Act (Vide Mallappa versus Tukko I.L.R. 1937 Bombay 464 at page 478). The order of forfeiture was passed on 24-6-1941 and the plaintiff had due notice of it. he did not prefer an appeal there from to any Revenue Authority. He has not proved that he had recourse to all the appeals such as he made against the order of forfeiture allowed to him by law. The suit therefore is also barred under section 11 of the same Act.

Issue No.6 The order of forfeiture is dated 24-6-1941 but the plaintiff gave notice of suit as late as 11-7-1942. The suit is thus also barred under article 14 of the Limitation Act.

Issues Nos.3 and 4: Defendant No.2 was offered the suit -- survey number as he was the occupant of the neighbouring sub-division. He purchased it for punch value. In his written statement he contends inter alia that he has made improvements to the suit land and that he is entitled to reimbursement at the hands of the plaintiff of the amount spent by him. But in view of my findings recorded above these two --- issues do not survive for consideration.

Issue No.7: In view of the above findings this issue is answered in the negative. Hence I order as below.

O r d e r .

The suit stands dismissed. Plaintiff to pay the costs of defendants No.1 and 2 in separate sets and to bear his own.

31st August 1944.

Sd/H.P.Suryawanshi.

F.C.Subordinate Judge.

True Copy.

Compared by
Original
Copy

Clerk of the Court.

Decree in Original Suit(O.20.rr.6.7).

Decree.

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Exhibit 40.

In the court of the First Class Sub Judge of Karwar.

Civil Suit No. 125 of 1943.

Shav Timmappa Hegde Shigehalli, Havik Brahmin, aged about 40 years, land holder of Sirsi. Plaintiff.

versus

1. The Province of Bombay.
2. Sannappa Venkappa Hegde Havik Brahmin, aged about 43 years, land-holder of Sarkuli in Siddapur Taluka.
3. Manjappa Venkappa Hegde, Havik Brahmin, age about 38 years, Patil of Sarkuli in Siddapur Taluka.
   Defendant no. 3's name is deleted as per order below Ex. 15 on 4-11-1943. .. Defendants.

Claim Rs. 40-12-0 for court fees.
and Rs. 300/- for other purposes.

The plaintiff begs to atate as follows:-

The plaintiff was the owner and registered occupant of survey No. 19 pot hissa 4 measuring 0-6-8 and assessed at Rs. 2-8-0 and other lands in Sarkuli village in Siddapur Taluka in the North Kanara District. These lands were held on mulgeni by defendant no. 3 on condition that he should pay assessment and local cess directly to Government and a net munafa of Rs. 43-2-9 to the plaintiff as land lord. Accordingly defendant no. 3 had been paying every year assessment and local cess. But, it seems he committed default in payment thereof during the year 1940-41. Thereupon the amount of assessment and cess of Rs. 17-11-0 and one fourth fine of Rs. 4-4-1 total Rs. 21-15-1 were directed to be recovered from the plaintiff as the registered occupant. When the village officer of Sirsi, to whom the recovery papers were sent, demanded payment, the plaintiff fully paid up the said amount of Rs. 17-11-0 but, as regards the amount of fine, he made an endorsement below the prakaran praying for its remission, under the peculiar circumstances of the case, but he received no reply, Thereafter, the plaintiff received a notice of forfeiture under section 153 Land Revenue Code dated 30-5-1941, with regard to all the lands comprised in the lease hold, on the ground that the amount of fine of Rs. 4-4-1 had not been paid, Accordingly, these lands were forfeited under that section and later, the Mamlatdar of Siddapur issued a sale proclamation fixing the sale of the forfeited lands on 30-7-1941.

On further inquiry, the plaintiff came to know that, out of the forfeited lands the suit land described in para 1 above had been disposed of in favour of defendant no. 2, the owner of pot hissa no. 3 of the same survey number who is no other than a brotner of the mulgeni tenant defendant no.3. The plaintiff then appealed to the Revenue Authority i.e. to the Prant

Officer, Sirsi Division. He received a communication of 13-10-1941 from the Mamlatdar of Siddapur which reproduced the final order of 17-10-1941 passed by the Prant officer to the effect that the disposal of the suit under section 117 B was quite justified and that the other lands were released from forfeiture. Then he appealed to the Collector and the Commissioner but he failed in the appeal.

The plaintiff therefore gave notice to the Collector on 11-7-1942 under section 80 of C.P.C. that he would sue the Provincial Government along with defendants 2 and 3 for the reliefs mentioned below. The Collector acknowledged receipt thereof in his letter No. 7211 of 15/20th July 1942. But no reply was received. Hence this suit.

The plaintiff prays for the following reliefs.

1. A declaration that the order of forfeiture under section 153 and the order of disposal under section 117 B of the Land Revenue Code regarding the suit land are illegal and ultra vires, that the plaintiff is still owner of the suit land and not defendant no.2 - the new registered occupant - that defendant no. 3 is still the plaintiff's mulgeni tenant regarding the suit land and that the plaintiff alone and not defendant no. 2 is entitled to recover mulgeni rent of the suit land from defendant no. 3.

   Valuation for this purpose is ..... Rs. 5-0-0

2. A permanent injunction restraining defendant no. 1 from recognising defendant no. 2 as owner and registered occupant of the suit land.

Valuation for this purpose is ..... Rs. 5-0-0

3. Constructive possession of the suit land from defendants 1 and 2.

   Valuation for this purpose is 7½ times the assessment of Rs. 2-8-0 which amounts to ..... Rs. 18-12-0

   Valuation for jurisdiction is Rs. 278-0-0

4. Mesne profits from defendants 1 and 2 from 18-12-1941 the date of wrongful dispossession.

   Valuation for this purpose is .... Rs. 12-0-0

5. Costs of suit and such other reliefs as circumstances of the case require, from the said defendants or such of them as may be found liable.

Total Rs. 40-12-0

This suit coming on this day for final disposal before M.P.Suryawanshi, LL.B., F.C. Sub Judge, Karwar, in the presence of Messrs.V.S. Gokarn and P.V.Gokarn pleaders for the plaintiff and Rao Bahadur

37 5.47

Chandavarkar pleader for defendant no. 1 and Messrs. Naldipurkar and P.S. Kamat for defendant no. 2, it is ordered. The suit stands dismissed. Plain-

f to pay the costs of defendants nos. 1 and 2 (i.e. Rs. 15-0-0 being the cost of Defendant no. 1 and Rs. 15-8-0 being the cost of defendant no. 2) in separate sets and to bear his own.

31st August 1944.

Sd. M.P.Suryawanshi.
F.C.Subordinate Judge, Karwar.

Bill of costs.

Plaintiff.		Defendant no.1.		Defendant no.2.	
Plaint Ex. 1	5-0-0	Exhs. 11,17,18,19,22 26,12.	1-7-0	Vakilpatra Ex.8.	0-8-0
Vakilpatra Ex. 2.	0-8-0	Pleader's fees.	15-0-0	Exhs.10,13, 23.	0-7-0
Exhs. 14,21.	0-5-0			Pleader's fee.	15-0-
Copying Ex. 5	0-2-0				
Process Ex. 1	5-0-0				
Pleader's fee.	15-0-0				
	25-15-0		16-7-0		15-15-0
Cost disallowed. Exhs. 14,21.	0-5-0	Cost disallowed. Exhs.11,17,18,19, 22,26,12.	1-7-0	Costs disallowed. Exhs.10, 13,23.	0-7-0
Total Rs.	25-10-0		15-0-0		15-8-0

Given under my hand and the seal of this court this 31st day of August 1944.

Prepared by. Sd. S.F.Naik, Karkun.

Sd. M.P.Suryawanshi,
F.C. Sub Judge, Karwar. 22-9-44.

Plaintiff's pleader.-

Defendant 2's pleader.

" 1's pleader.

Suits.
Karwar.
For a declaration that orders of forfeiture and ~~or~~ disposal regarding suit land are illegal and ultra vires.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 8033
Bombay Castle, 16th November 1944.

Read Government Resolution, Legal Department, No. 485, dated the 20th January 1944.

In the Court of the First Class Sub-Judge of Karwar. Civil Suit No. 125 of 1943. Keshav Timmappa Hegde ... Plaintiff. Versus (1) The Province of Bombay) (2) Sanhappa Venkappa Hegde) Defendants. (3) Manjappa Venkappa Hegde) Claim - Rs.40-12-0 for Court fees and Rs. 300 for other purposes.	Letter from the District Government Pleader, Karwar, No. 223, dated the 19th September 1944 -- Stating that the suit noted in the margin was decided by the First Class Sub-Judge,

Karwar, on 31st August 1944, when the following order was passed :-

"The suit stands dismissed. Plaintiff to pay the costs of defendants No. 1 and 2 in separate sets and to bear his own."

Letter from the District Government Pleader, Karwar, No. 244, dated the 16th October 1944 -- Forwarding uncertified copies of the judgment and decree.

RESOLUTION,-- The result of the suit is recorded.

By order of the Governor of Bombay,

Original

(P. N. MOOS,
for (Secretary to Government.

To

Subd. for approval and signature.

The Revenue Department,

The Commissioner, S.D.,

The Collector of Karwar.

Issued C&P 16/11